

Internal Revenue Service, Treasury

§ 1.267(f)-1

(4) *Examples.* The application of the provisions of this paragraph may be illustrated by the following examples:

Example 1. During 1953, H sold class A stock which had cost him \$1,100, and common stock which had cost him \$2,000, to his wife W for a lump sum of \$1,500. Under section 24(b)(1)(A) of the 1939 Code, the loss of \$1,600 on the transaction was not allowable to H. At the time the stocks were purchased by W, the fair market value of class A stock was \$900 and the fair market value of common stock was \$600. In 1954, W sold the class A stock for \$2,500. W's recognized gain is determined as follows:

| | |
|--|---------|
| Amount realized by W on sale of class A stock | 2,500 |
| Less: Basis allocated to class A stock—\$900/ \$1,500 × \$1,500 | 900 |
| Realized gain on transaction | 1,600 |
| Less: Loss sustained by H on sale of class A stock to W not allowable as a deduction: | |
| Basis to H of class A stock | \$1,100 |
| Amount realized by H on class A stock—\$900/ \$1,500 × \$1,500 | 900 |
| Unallowable loss to H on sale of class A stock | 200 |
| Recognized gain on sale of class A stock by W | 1,400 |

Example 2. Assume the same facts as those stated in *Example 1* of this subparagraph except that H originally purchased both classes of stock for a lump sum of \$3,100. The unallowable loss to H on the sale of all the stock to W is \$1,600 (\$3,100 minus \$1,500). An exact determination of the unallowable loss sustained by H on sale to W of class A stock cannot be made because H's basis for class A stock cannot be determined. Therefore, a determination of the unallowable loss is made by allocating to class A stock a portion of H's loss on the entire property transferred to W in the proportion that the fair market value of class A stock at the time acquired by W (\$900) bears to the fair market value of both classes of stock at that time (\$1,500). The allocated portion is \$900/\$1,500 × \$1,600, or \$960. W's recognized gain is, therefore, \$640 (W's realized gain of \$1,600 minus \$960).

(c) *Special rules.* (1) Section 267(d) does not affect the basis of property for determining gain. Depreciation and other items which depend on such basis are also not affected.

(2) The provisions of section 267(d) shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of section 1091, or section 118 of the Internal Revenue Code of 1939, which relate to losses from wash sales of stock or securities.

(3) In determining the holding period in the hands of the transferee of property received in an exchange with a transferor with respect to whom a loss on the exchange is not allowable by reason of section 267, section 1223(2) does not apply to include the period during which the property was held by the transferor. In determining such holding period, however, section 1223(1) may apply to include the period during which the transferee held the property which he exchanged where, for example, he exchanged a capital asset in a transaction which, as to him, was non-taxable under section 1031 and the property received in the exchange has the same basis as the property exchanged.

§ 1.267(d)-2 Effective date; taxable years subject to the Internal Revenue Code of 1939.

Pursuant to section 7851(a)(1)(C), the regulations prescribed in § 1.267(d)-1, to the extent that they relate to determination of gain resulting from the sale or other disposition of property after December 31, 1953, with respect to which property a loss was not allowable to the transferor by reason of section 267(a)(1) (or by reason of section 24(b) of the Internal Revenue Code of 1939), shall also apply to taxable years beginning before January 1, 1954, and ending after December 31, 1953, and taxable years beginning after December 31, 1953, and ending before August 17, 1954, which years are subject to the Internal Revenue Code of 1939.

§ 1.267(f)-1 Controlled groups.

(a) *In general*—(1) *Purpose.* This section provides rules under section 267(f) to defer losses and deductions from certain transactions between members of a controlled group (intercompany sales). The purpose of this section is to prevent members of a controlled group from taking into account a loss or deduction solely as the result of a transfer of property between a selling member (S) and a buying member (B).

(2) *Application of consolidated return principles.* Under this section, S's loss or deduction from an intercompany sale is taken into account under the